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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,320	10/20/2003	Susan A. Kingsman	674523-2030	4549
20999	7590	03/28/2006		
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER LIETO, LOUIS D	
			ART UNIT	PAPER NUMBER
			1632	
DATE MAILED: 03/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,320

Applicant(s)

KINGSMAN ET AL.

Examiner

Louis D. Lieto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 7,10,11,19,22,23, drawn to a viral vector system comprising a viral vector pseudotyped with a env nucleotide sequence, which comprises a NOI that is a selection gene, a marker gene, a therapeutic gene, a cDNA library, or a POI classified in class 435, subclass 320.1.
- II. Claims 7,19, drawn to a viral vector system comprising a viral vector pseudotyped with an env nucleotide sequence, which comprises a NOI that is an anti-sense sequence, classified in class 435, subclass 320.1.
- VI. Claim 25, drawn to a method of analyzing the function of a gene in a target adipose tissue cell, classified in class 435, subclass 5.

Claims 1-6,8,9,12-18,20,21,24,26-28 link inventions I-IV. The restriction requirement among the linked inventions is subject to the nonallowance of the linking claim(s), claims 1-6,8,9,12-18,20,21,24,26-28. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting

rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are patentably distinct. In the instant case the different invention of group I is drawn to a viral vector system comprising a viral vector pseudotyped with a env nucleotide sequence, which comprises a NOI that is a selection gene, a marker gene, a therapeutic gene or a cDNA library, while the invention of group II is drawn to a viral vector system comprising a viral vector pseudotyped with a env nucleotide sequence, which comprises a NOI that encodes an anti-sense sequence. The vector of group I is substantially different from that of group I since it only contains NOIs that are used to express a protein. The vector of group II expresses an anti-sense sequence, which cannot be used to express a protein, and has a different function from the other NOIs since it is used to target mRNAs for degradation.

Inventions I, II and III are patentably distinct. In the instant case the different invention of group I is drawn to a viral vector system comprising a viral vector pseudotyped with a env nucleotide sequence, which comprises a NOI that is a selection gene, a marker gene, a therapeutic gene or a cDNA library, while the invention of group II is drawn to a viral vector system comprising a viral vector pseudotyped with a env nucleotide sequence, which comprises a NOI that encodes an anti-sense sequence, and the invention of group III is drawn to a method of analyzing the function of a gene in a target adipose tissue cell. The method of group II can be practice without the vectors of groups I or II by using methods, such as electroporation with

naked siRNA. Further, the vectors of groups I and II can be used in patentably distinct methods, such as the treatment of disease.

Furthermore, searching the inventions of groups I-III together would impose a serious search burden. In the instant case, the search of a selection gene, a marker gene, a therapeutic gene, a cDNA library, or a POI and an anti-sense sequence, are quite different from each other. Further, a method of analyzing the function of a gene in a target adipose tissue cell requires a separate search of the art. Thus, the search of groups I-III is not co-extensive. As such, it would be burdensome to search the inventions of groups I-III together.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species:

- a) rabies G protein, mutant, homologue or fragment
- b) VSV-G protein, mutant, homologue or fragment
- c) coxal virus glycoprotein, mutant, homologue or fragment
- d) chandipura virus glycoprotein, mutant, homologue or fragment

The species are independent or distinct because they are drawn to patentably distinct proteins that have different structures and sequences.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-28 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Lou Lieto whose telephone number is (571) 272-2932. The examiner can normally be reached on Monday-Friday, 9am-5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Patent applicants with problems or questions regarding electronic images that can be viewed in the PAIR can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application

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status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Dr. Louis D. Lieto

Patent Examiner

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DEBORAH CROUCH
PRIMARY EXAMINER

GROUP 1801/630